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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/051,613	01/17/2002	Nikolay Shkolnik	EG-12	9021
29127	7590	02/28/2005	EXAMINER	
HOUSTON ELISEEVA 4 MILITIA DRIVE, SUITE 4 LEXINGTON, MA 02421			MERCADO, JULIAN A	
			ART UNIT	PAPER NUMBER

1745

DATE MAILED: 02/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/051,613

Applicant(s)

SHKOLNIK ET AL.

Examiner

Julian Mercado

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6,9 and 12-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 9, 12-51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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## **DETAILED ACTION**

### ***Remarks***

This Office action is responsive to applicant's amendment filed December 3, 2004.

Claims 1-6, 9 and 12-51 are pending.

### ***Claim Objections***

The objection to claims 14, 15 and 22 have been obviated.

Claim 5 is objected to because of the following informalities:

- a. In claim 5 at line 1, it is suggested to change "operative" to --is operative--.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The rejection of claims 5, 15 and 26 under 35 U.S.C. 112, second paragraph has been obviated.

### ***Claim Rejections - 35 USC § 102***

The rejection of claims 1-4 and 34 under 35 U.S.C. 102(e) based on Pettit (U.S. Pat. 6,077,620) has been withdrawn. The examiner notes applicant's amendment to claim 1 which now incorporates the subject matter of provisionally allowed claim 10 (now canceled) and intervening claims 7 and 8 (now canceled).

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Accordingly, the rejection of claim 5 under 35 U.S.C. 103(a) based on Pettit and Kaneko et al. (U.S. Pat. 4,923,768), the rejection of claims 12, 13, 23, 24, 32 and 33 under 35 U.S.C. 103(a) based on Pettit and Hsu et al., and the rejection of claim 25 under 35 U.S.C. 103(a) based on Pettit, Hsu et al. and Kaneko et al. has each been withdrawn.

### ***Double Patenting***

Claims 1-6, 9 and 12-51 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-17 of U.S. Patent No. 6,606,850 B2 (hereinafter the '850 Patent), rejection of record and maintained for the reasons of record. New claims 36-51 are rejected to the extent that independent claim 36 recites the subject matter of claims 1, 7, 8, and 11 which were included in the prior rejection. The examiner notes that applicant has deferred to address this issue until a final set of claims is allowed.

### ***Allowable Subject Matter***

Claims 1-6, 9 and 12-35 are allowed for the reasons set forth in the prior Office action. With respect to claim 16, as a matter of clarification this claim is allowed in accordance with the third embodiment of the claimed invention, as set forth in the prior Office action.

New claims 36-51 are allowed. The examiner notes that independent claim 36 is modeled after provisionally allowed dependent claim 11 (now canceled).

*Conclusion*

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julian Mercado whose telephone number is (571) 272-1289. The examiner can normally be reached on Monday through Friday.

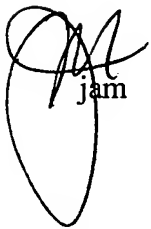
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick J. Ryan, can be reached on (571) 272-1292. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



JAM



PATRICK JOSEPH RYAN  
SUPERVISORY PATENT EXAMINER